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**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT'S
NEW DIRECTIVE ON SEGREGATION:
WHY WE NEED FURTHER PROTECTIONS**

February 2014



THE
JOHN MARSHALL LAW SCHOOL



ABOUT THE AUTHORS

The John Marshall Law School International Human Rights Clinic

The John Marshall Law School International Human Rights Clinic (IHRC) is a nonprofit, nonpartisan law school legal clinic dedicated to promoting and protecting human rights in the United States and around the world. The IHRC offers students a background in human rights advocacy through the practical experience of working in international human rights cases and projects.

ACKNOWLEDGEMENTS

The principal authors of this report are the students of The John Marshall Law School International Human Rights Clinic (IHRC), formerly the Human Rights Project, under the supervision of Professors Steven D. Schwinn and Sarah Dávila-Ruhaak.

This report would not have been possible without the contribution and expertise of several members of the National Immigrant Justice Center: Alexis Perlmutter, former Associate Director of Policy; Jennifer Chan, Associate Director of Policy; and Mary Meg McCarthy, Executive Director.

The IHRC would like to thank Professor Lisa Frohmann, Professor and Head of the University of Illinois Chicago (UIC) Department of Criminology, Law, and Justice, for promoting the participation of UIC students in the clinic. We are also thankful for the support of Professor Matthew Lippman, who has been instrumental in the UIC and The John Marshall Law School collaboration through the IHRC.

The IHRC is also grateful to The John Marshall Law School for its support in promoting the IHRC's work. Thank you to Deans John E. Corkery, Kathryn J. Kennedy, Ralph Ruebner, Jodie Needham, and Anthony Niedwiecki.

Finally, the IHRC would like to thank U.S. Immigration and Customs Enforcement (ICE) for its cooperation in providing information regarding detention and segregation policies.



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REAL LIFE STORIES OF SOLITARY

The United States relies on solitary confinement more than any other democratic nation in the world.¹ Immigrants housed in detention facilities are not supposed to be punished for their immigration status; they are only held to ensure that they appear for administrative hearings. One of these immigrants, Rashed, sought asylum in the United States because he saw this country as a symbol of freedom and opportunity.² Instead, he was placed in solitary confinement in Dodge County Detention Center in Wisconsin where he witnessed detention at its worst.³ He saw first-hand how the detention conditions and treatment of detainees shook individuals to their core.⁴ After hearing people incessantly talk to themselves, Rashed considers himself lucky to have won his case and to have escaped the nightmare of solitary confinement.⁵

Like Rashed, Delfino Curos, a Mexican immigrant, was placed in solitary confinement, allegedly to protect him from other inmates who might harass him for being homosexual.⁶ Delfino spent four months locked up in a cell where he remained isolated for almost twenty-four hours every single day.⁷ His requests to get copies of the Bible, books, or any other kind of reading material were denied.⁸ He was left in silence, with nothing but the inescapable sounds of individuals around him attempting suicide.⁹ There are still hundreds of thousands of immigrant detainees that are currently in detention facilities across the country that could be subject to the same fate.¹⁰



INTRODUCTION

Since 2001 Immigration and Customs Enforcement (ICE) has detained three million undocumented immigrants in detention facilities across the United States.¹¹ As a unit under the U.S. Department of Homeland Security (DHS), ICE is tasked with protecting against terrorism; enhancing security; protecting the borders against illicit trade, travel and finance; and engaging in interior immigration enforcement.¹² On any given day about 300 immigrant detainees are placed in solitary confinement across the country.¹³ While only one percent of immigrant detainees are placed in solitary confinement, the practice is alarming since they are held on civil, not criminal charges.¹⁴

Solitary confinement is a form of physical and social isolation where individuals are confined to a cell for 22 to 24 hours a day.¹⁵ Detention facilities use solitary confinement as punishment for various offenses.¹⁶

This report discusses the September 2013 ICE policy on segregation and why it does not offer sufficient protection for detainees. In examining this policy, it is critical to look at earlier government policies and how they failed to protect detainees. It is also critical to look at specific examples of the use of solitary confinement in detention facilities. The failures of earlier government policies and the examples of the use of solitary confinement together illustrate the shortcomings in the September 2013 ICE policy and danger that it poses to detainees.

The factual information in this Report was gathered through Freedom of Information Act (FOIA) documents received by The John Marshall Law School Human Rights Project and the National Immigrant Justice Center.¹⁷



ICE SEGREGATION AT A GLANCE

Though we have used the phrase “solitary confinement” until now, ICE uses the term “segregation” to refer to the practice of separating individuals from the general population in a prison or detention facility. ICE categorizes segregation into two classifications: administrative and disciplinary.¹⁸

Administrative segregation allows officials to separate a detainee for administrative reasons, like threats to the safety of the detainee or others, protective custody, and “good order.”¹⁹

Disciplinary segregation is used to separate individuals who have allegedly violated facility rules.²⁰ ICE standards require officials to conduct a hearing to determine whether segregation is warranted before they place an individual in disciplinary segregation. According to ICE’s Performance-Based National Detention Standards of 2011 (PBNDS 2011), disciplinary segregation can take place “only after a finding by a disciplinary hearing panel that the detainee is guilty of a prohibited act or rule violation classified at

a 'greatest,' 'high' or 'high-moderate' level."²¹ But nevertheless, officials commonly use disciplinary segregation to punish individuals for minor infractions, such as having an extra snack or having facility-prescribed medication in their cells.²²

Implementation of segregation practices varies from facility to facility. ICE fails to impose proper and uniform standards to ensure that all immigrant detainees are provided proper treatment and conditions, creating insurmountable difficulties for detainees.

ICE'S NEW DIRECTIVE

On September 4, 2013, ICE issued a new directive,²³ effective immediately, that establishes a policy and procedures for ICE review of detainees placed into segregation. The new directive sets standard with regard to the following points:

- When segregation can be used;
- How segregation is to be used;
- How to identify detainees with special vulnerabilities, and how to provide for their enhanced protection;
- How officials review a detainee's segregation, including how officials review segregations of detainees with a special vulnerability;
- How officials report and evaluate segregation cases.

The new directive is intended to complement ICE's detention policies and procedures in its National Detention Standards (NDS), PBNDS 2008, PBNDS 2011, and any other applicable ICE policies.²⁴ The NDS, ICE's original standards, were established to ensure "consistent conditions of confinement, program operations and management" in detention facilities where ICE detainees are held.²⁵ ICE issued the PBNDS 2008 and PBNDS 2011 to set standards on, and thus improve, particular conditions of detention.²⁶ This latest directive, PBNDS 2013, complements these earlier directives and sets standards with regard to detainees in segregated housing.

ICE facilities across the United States implement different versions of the various standards, thus creating a lack of consistency and uniformity in detention conditions.²⁷

How Segregation Is To Be Used?

According to the new directive, administrative and disciplinary segregation can be used as follows:

Administrative segregation can only be used when segregation is *necessary* to ensure the safety and security of a detainee, or good order of the facility.²⁸

Administrative segregation should never to be used punitively.²⁹ It should only be used for the *shortest* amount of time necessary and in the *least restrictive* manner possible.³⁰

Disciplinary segregation requires *prior* authorization by the facility's disciplinary panel. It can only be authorized *after* a hearing where a panel determines the detainee committed a *serious* violation of a facility rule.³¹ Disciplinary segregation needs to be in line with applicable ICE standards, including the Disciplinary Severity Scale, and can only be used when there are no other alternatives.³²

Special Vulnerabilities as a Separate Category

The new directive recognizes special vulnerabilities as a separate category of persons needing enhanced protections.³³ Under ICE policy, detainees may request special protections if they are:

- Known to suffer from mental illness or serious medical illness;
- Disabled, elderly, pregnant, or nursing;
- Susceptible to harm in the general population due in part to their sexual orientation or gender identity; or
- Victims of sexual assault, torture, trafficking or abuse, either in or out of ICE custody.³⁴

But in order for a detainee to request protection under these vulnerabilities, the detention facility must have knowledge of these specific conditions prior to segregation; without such knowledge, an otherwise vulnerable detainee is not subject to protection. This new process, rather than heightening protection, allows for willful blindness on the part of the facility. Facility personnel have no incentive to proactively identify vulnerable individuals who would be entitled to individualized assessments of housing, medical, and security measures, which may include transfer to another facility, additional out-of-cell time, or in some cases, release from custody.³⁵

Review Process of Detainees in Segregation

The directive creates additional steps to review the segregation of a detainee. This review takes place when a detainee is segregated for more than 14 days, is identified as vulnerable, or if there are other factors related to the health and risk of victimization of the detainee.³⁶

Review for Detainees in Extended Segregation

The new directive requires review of extended segregation placements, which occur when a detainee is in segregation for more than 14 days.³⁷

The Field Office Director (FOD) monitors the segregation of detainees. The directive specifies that the FOD “shall take steps to ensure that he or she is notified in writing by the facility administrator whenever a detainee has been held continuously in segregation for 14 days [within a 21-day period], 30 days, and at every 30-day interval” after that.³⁸ The FOD must review whether the current segregation placement is appropriate, based on the detention standards for administrative or disciplinary segregation.

The directive does not specify how the FOD ensures that the administrator reports each segregation placement in a timely manner. The requirement relies solely on the due diligence of the facility administrator.

Detainees with Special Vulnerabilities

The directive specifies that the FOD “shall take steps to ensure that he or she is notified in writing as soon as possible by the facility administrator, but no later than 72 hours after the initial placement into segregation” of a detainee with a special vulnerability.³⁹ Upon such notification, the directive requires ICE personnel to determine whether segregation is appropriate and to provide appropriate services and treatment, according to the detainee’s particular special vulnerability.⁴⁰

Again, the directive does not specify how the FOD ensures that the administrator report each segregation placement. The requirement relies solely on the due diligence of the facility administrator.

Reporting Procedures

As previously stated, facility administrators are required to report when a detainee “has been held continuously in segregation for 14 days, 30 days, and at every 30 day interval thereafter,”⁴¹ or within 72 hours for a detainee with a special vulnerability.⁴²

Reporting Levels

Once the FOD receives a report of segregation from the facility administrator, the FOD receives the assistance of the Enforcement and Removal Operations (ERO) to determine the transfer or release options or any other ICE options available to the detainee.⁴³ After a determination that continued segregation is the appropriate course of action, the FOD provides the ERO Custody Management Division (CMD)⁴⁴ with the documentation to support its decision. The CMD then assists the Detention Monitoring Council (DMC)⁴⁵ subcommittee and Segregation Review Coordinator to collect and disseminate segregation reports.⁴⁶ The CMD also works with the ICE Health Service Corp (IHSC) to compile and maintain a list of facility resources and capabilities.⁴⁷ The directive requires CMD, IHSC, and FODs to continually seek to enhance the availability of the resources and capabilities on that list.⁴⁸ The IHSC provides feedback on the

placement of detainees.⁴⁹ The FOD produces a report and submits it to ICE headquarters of detainees in extended segregation.

FAILURE IN IMPLEMENTING STANDARDS

ICE's history suggests that it is unlikely that the new directive will be implemented swiftly and uniformly.

The Performance-Based National Detention Standards of 2011 (PBNDS 2011) were created in response to extensive media exposure of human rights violations in ICE detention facilities. The PBNDS 2011 reflect changes which were ultimately "crafted to improve medical and mental health services, increase access to legal services and religious opportunities, improve communication with detainees with no or limited English proficiency, improve the process for reporting and responding to complaints, and increase recreation and visitation."⁵⁰

In 2012, then-ICE Director John Morton testified that "there are a few facilities [ICE] completely control[s] and in those implementation can be immediate."⁵¹ However, even though there is an opportunity to mandate compliance, facilities are still given great latitude in their standards. For example, ICE's Karnes County facility began housing detainees in March 2012, one month after the PBNDS 2011 were announced.⁵² However, the operating contract between the facility and ICE does not require Karnes County to comply with the latest standards; therefore, the facility operates under the PBNDS 2008.⁵³ Indeed, ICE's own materials say that "[d]ifferent versions of [the NDS, the PBNDS 2008, and the PBNDS 2011] apply to ICE's various detention facilities. ICE has begun implementing PBNDS 2011 across its detention facilities, with priority initially given to facilities housing the largest populations of ICE detainees."⁵⁴

Lessons from Solitary

Detention facilities place immigrant detainees in segregation for minor offenses and, at times, no offense at all. Facilities use segregation as a mechanism to control the detainee population. The data collected for this report received in response to Freedom of Information Act (FOIA) requests, provide insight into this grim reality.

*Washoe County, Nevada*⁵⁵

A detainee was placed in disciplinary segregation as a part of a "nine-day program" for having engaged in a fight.⁵⁶ During his segregation, the detainee's mattress and blanket were removed from the cell and he was only fed "Nutra Loaf"⁵⁷ for meals for seven days.⁵⁸ The American Correctional Association "precludes the use of food as a

disciplinary measure,”⁵⁹ and the PBNDS 2011 explicitly provide that “food shall never be used for reward or punishment.”⁶⁰

For the first three days, the detainee had a mattress from 10:00 pm to 7:30 am, with no linens other than a blanket. After the first three days, the detainee was given the mattress for the full day. On day five, the detainee received linens. After ten days in disciplinary segregation, the detainee was transferred to administrative segregation for at least another 14 days for behavioral review.⁶¹

In 2009, seven detainees filed an Inmate Grievance Form against a prison officer, detailing how the prison guard regularly commandeered control of the television.⁶² When a detainee requested Spanish language programming on the television, the guard threatened him by saying that he would “send them to the hole.” During an investigation of the incident, a sergeant questioned each detainee to try to identify the drafter of the complaint.⁶³ Four of the seven detainees refused to name the drafter and were subsequently moved out of their housing block.⁶⁴ In this instance, detainees were punished for filing a grievance with unwarranted segregation. This is in clear violation of the PBNDS 2011, which were created to “improve the process for reporting and responding to complaints.”⁶⁵

*Seneca County, Ohio*⁶⁶

On April 2, 2011 a detainee was recommended for 15 days in segregation as punishment for having medicine in his cell.⁶⁷ The pills were given to him at a prior detention center with presumably all of the required authorizations.⁶⁸ At his disciplinary hearing, despite this information, the panel recommended 15 days in disciplinary segregation.⁶⁹

*Butler County, Ohio*⁷⁰

A female detainee was placed in suicide (“forensic”) watch on January 6, 2012, due to her suicidal thoughts.⁷¹ On or about January 27, 2012, she was discovered engaging in sexual acts with another detainee and was placed in disciplinary segregation for 30 day.⁷² She was placed in extended disciplinary segregation for 30 days, despite the fact that the facility knew of her suicidal tendencies.⁷³ The disciplinary notice and incident report do not make reference to the detainee’s prior mental state, as a mitigating factor or basis for a mental assessment during the 30-day segregation.⁷⁴

PBNDS 2011 requires facilities to conduct a mental health assessment before placing a detainee disciplinary segregation, especially when detainee is known to have a mental illness.⁷⁵ If there is reason for concern, a mental health professional conducts a complete evaluation.⁷⁶ Facilities are required to make every effort to place detainees with serious mental illness in a setting in or outside the facility where appropriate treatment can be provided, rather than putting them in segregation.⁷⁷ Here, the

detainee's history of suicidal thoughts should have been considered, and a special assessment of the detainee's mental health should have been conducted prior to the order of 30-day segregation.

Another detainee was placed in disciplinary segregation for 30 days for playing cards during church services.⁷⁸ The reporting officer charged the detainee with three violations: playing cards, lying to staff, and for posing a threat to the security of the facility or other inmates.⁷⁹

As evidenced from the examples above, segregation is often used as a disciplinary tool for minor infractions, which demonstrates a blatant disregard for the detention standards. These examples raise the questions of whether the new ICE directive provides sufficient protection, the likelihood that the new ICE directive will be fully and uniformly implemented, and it calls for the need for monitoring to ensure full compliance throughout detention facilities.

RECOMMENDATIONS

This report recommends that:

- Monitoring provisions that have been recently adopted by the new ICE directive should be strictly enforced.
- An independent committee composed of civil society must be provided with the power of monitoring of ICE's new segregation directive 11065.1.
- Solitary confinement (segregation) be used as a last resort when there are no alternatives.
 - Vulnerability must take into consideration additional factors such as age, race, and religion.
 - Periodic and consistent evaluation of detainees' vulnerability must be performed to monitor their medical and mental health, or other factors affecting vulnerability.
 - If the detainee requests placement, there must be a constant review process to ensure that the detainee is not kept in solitary confinement against his or her wishes, or for longer than requested.
 - DHS/ICE and an independent third party should investigate the underlying reasons why individuals request to be put in segregation.

- All uses of solitary confinement must be reported by DHS/ICE to Congress and reports must be publicly available.
- Information about detention conditions, facility policies, and segregation practices must be readily available to detainee's families, advocates, and the public at large.

ANNEX

Table: Prohibited Acts By Category of Offense⁸⁰

ICE determines the severity of disciplinary actions taken against detainees in facilities according to the designated prohibited acts below.⁸¹

| Category | Prohibited Acts | Appropriate Sanctions |
|-------------------------|--|---|
| Greatest Offense | <ul style="list-style-type: none"> • Killing • Assaulting any person (includes sexual assault) • Escape from escort; escape from a secure facility • Setting a fire⁸² • Possession or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical explosive, escape tool, device or ammunition • Rioting • Inciting others to riot • Hostage-taking • Assaulting a staff member or any law enforcement officer • Threatening a staff member or any law enforcement officer with bodily harm • Interfering with a staff member in the performance of duties* • Conduct that interrupts or interferes with the security or orderly running of the facility* | <ul style="list-style-type: none"> • Initiate criminal proceedings • Disciplinary transfer (recommend) • Disciplinary segregation (up to 60 days) • Make monetary restitution, if funds are available • Loss of privileges (i.e. commissary, vending machines, movies, recreation, etc.) |
| High Offense | <ul style="list-style-type: none"> • Escaping from unescorted activities open or secure facility, proceedings without violence • Fighting, boxing, wrestling, sparring and any other form of physical encounter, including horseplay, that causes or could cause injury to another person, except when part of an approved recreational or athletic activity • Possession or introduction of an unauthorized tool • Loss, misplacement, or damage of any restricted tool • Threatening another with bodily harm • Extortion, blackmail, protection, | <ul style="list-style-type: none"> • Initiate criminal proceedings • Disciplinary transfer (recommend) • Disciplinary segregation (up to 30 days) • Make monetary restitution, if funds are available • Loss of privileges (e.g., commissary, vending machine, movies, recreation, etc.) • Change housing • Remove program and/or group activity • Loss of job • Impound and store detainee's personal property • Confiscate contraband |

| | | |
|--|---|---|
| | <p>and demanding or receiving money or anything of value in return for protection against others, avoiding bodily harm or avoiding a threat of being informed against</p> <ul style="list-style-type: none"> • Engaging in sexual acts • Making sexual proposals or threats • Wearing a disguise or mask • Tampering with or blocking any lock device • Adulterating of food or drink • Possession, introduction, or use of narcotics, narcotic paraphernalia, or drugs not prescribed for the individual by the medical staff • Possessing an officer's or staff member's clothing • Engaging in or inciting a group demonstration • Encouraging others to participate in a work stoppage or to refuse to work • Refusing to provide a urine sample or otherwise cooperate in a drug test • Introducing alcohol into the facility • Giving or offering an official or staff member a bribe or anything of value • Giving money to, or receiving money from, any person for an illegal or prohibited purpose, such as introducing/conveying contraband • Destroying, altering, or damaging property (government or another person's) worth more than \$100 • Being found guilty of any combination of three or more high moderate or low moderate offenses within 90 days • Signing, preparing, circulating, or soliciting support for prohibited group petitions • Possessing or introducing an incendiary device (e.g., matches, a lighter, etc.) • Any act that could endanger person(s) and/or property • Interfering with a staff member in | <ul style="list-style-type: none"> • Restrict to housing unit • Warning |
|--|---|---|

| | | |
|------------------------------|--|---|
| | <p>the performance of duties[■]</p> <ul style="list-style-type: none"> • Conduct that disrupts or interferes with the security or orderly operation of the facility[■] | |
| High Moderate Offense | <ul style="list-style-type: none"> • Indecent exposure • Stealing (theft) • Misusing authorized medication • Loss, misplacement, or damage of a less restricted tool • Lending property or other item of value for profit/increased return • Possession of item(s) not authorized for receipt or retention and not issued through regular channels • Refusing to clean assigned living area • Refusing to obey the order of a staff member or officer⁸³ • Insolence toward a staff member • Lying or providing false statement to staff • Counterfeiting, forging or other unauthorized reproduction of money proceeding or other official document or item (i.e. security document, identification card, etc.)⁸⁴ • Participating in an unauthorized meeting or gathering • Being in an unauthorized area • Failing to stand count • Interfering with count • Making, possessing, or using intoxicant(s) • Refusing a Breathalyzer test or other test of alcohol consumption • Gambling • Preparing or conducting a gambling pool • Possessing gambling paraphernalia • Unauthorized contact with the public • Giving money or another item of value to, or accepting money or another item of value from, anyone, including another detainee, without staff | <ul style="list-style-type: none"> • Initiate criminal proceedings • Disciplinary transfer (recommend) • Disciplinary segregation (up to 72 hours) • Make monetary restitution, if funds are available • Loss of privileges (i.e. commissary, vending machines, movies, recreation, etc.) • Change housing • Remove from program and/or group activity • Loss of job • Impound and store detainee's personal property • Confiscate contraband • Restrict to housing unit • Reprimand • Warning |

| | | |
|------------------------------------|--|---|
| | <p>authorization</p> <ul style="list-style-type: none"> • Destroying, altering, or damaging property (government or another person's) worth more than \$100 • Signing, preparing, circulating, or soliciting support for prohibited group petitions • Interfering with a staff member in the performance of duties□ • Conduct that disrupts or interferes with the security or orderly running of the facility□ | |
| <p>Low Moderate Offense</p> | <ul style="list-style-type: none"> • Possession of property belonging to another person • Possessing unauthorized clothing • Malingering, feigning illness • Smoking where prohibited • Using abusive or obscene language • Tattooing, body piercing, or self-mutilation • Unauthorized use of mail or telephone (with restriction or temporary suspension of the abused privileges often the appropriate sanction) • Conduct with a visitor in violation of rules and regulations (with restriction or temporary suspension of visiting privileges often the appropriate sanction) • Conducting a business • Possessing money or currency, unless specifically authorized • Failure to follow safety or sanitation regulations • Unauthorized use of equipment or machinery • Using equipment or machinery contrary to posted safety standards • Being unsanitary or untidy, failing to keep self and living area in accordance with posted standards • Interfering with a staff member in the performance of duties♦ • Conduct that disrupts or interferes with the security or orderly running of the facility♦ | <ul style="list-style-type: none"> • Loss of privileges, commissary, vending machines, movies, recreation, etc. • Change housing • Remove from program and/or group activity • Loss of job • Impound and store detainee's personal property • Confiscate contraband • Restrict to housing unit • Reprimand • Warning |

- * Conduct must be of greatest severity. This charge is to be used only if another charge of greatest severity is not applicable
- Conduct must be of highest severity. This charge is to be used only when no other charge of highest severity is applicable.
- Offense must be of high moderate severity. This charge to be used only when no other charge in this category is applicable
- ◆ Offense must be of low moderate severity. This charge is to be used only when no other charge in this category is applicable

¹ Ian Urbina & Catherine Rentz, *Immigrants held in solitary, often for weeks*, Investigative Reporting Workshop (March 24, 2013), <http://investigativereportingworkshop.org/investigations/the-hole/story/the-hole/> (last visited Jan. 31, 2014) [hereinafter *Immigrants held in solitary*].

² Catherine Rentz, *Solitary in Detention*, YouTube (Sept. 11, 2013), <http://www.youtube.com/watch?v=Slo1QkugG3s>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ American Civil Liberties Union, *Immigrant Detention*, <https://www.aclu.org/immigrants-rights/immigration-detention> (last visited Jan. 31, 2014).

¹¹ Gretchen Gavett, *Map: The U.S. Immigration Detention Boom - Lost in Detention*, Frontline PBS. (Oct. 18, 2011, 7:54 PM), <http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/map-the-u-s-immigration-detention-boom/>.

¹² U.S. Immigration and Customs Enforcement, *Overview*, <http://www.ice.gov/about/overview/> (last visited Jan. 31, 2014).

¹³ *Immigrants held in solitary*, *supra* note 1.

¹⁴ *Id.*

¹⁵ U.N. G.A. Res. A/66/268, *Torture and other cruel, inhuman or degrading treatment or punishment*, (Aug. 5, 2011)

¹⁶ See Performance-Based Nat'l Det. Standards 2008 ICE/DRO Det. Standard Appendix A, *available at* http://www.ice.gov/doclib/dro/detention-standards/pdf/disciplinary_system.pdf [hereinafter PBNDS 2008].

¹⁷ Formerly the Human Rights Project, now the Human Rights Clinic

¹⁸ Performance-Based Nat'l Det. Standards 2011 § 7.5 (2013), *available at* <http://www.ice.gov/doclib/detention-standards/2011/pbnds2011.pdf> [hereinafter PBNDS 2011].

¹⁹ PBNDS 2011, *supra* note 18, at § 7.5; U.S. Immigration and Customs Enforcement Directive 11065.1, *Review of the Use of Segregation for ICE (DHS 2013) § 3.1*, *available at* http://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf [hereinafter ICE Directive 11065.1].

²⁰ ICE Directive 11065.1, *supra* note 19, § 3.2

²¹ PBNDS 2011, *supra* note 18, at § 2.12

²² Letter from Diane Nutter, *Jail Clerk at Seneca County Jail, in response to a Freedom of Information Request* (Mar. 12, 2012) (on file with The John Marshall Human Rights Clinic) [hereinafter *Seneca County Jail*].

²³ ICE Directive 11065.1, *supra* note 19.

²⁴ *Id.*

²⁵ U.S. Immigration and Customs Enforcement, *Fact Sheet: ICE Detention Standards* (Feb. 24, 2012), <http://www.ice.gov/news/library/factsheets/facilities-pbnds.htm> [hereinafter *ICE Fact Sheet*]

²⁶ *Id.*

²⁷ *Id.*

²⁸ ICE Directive 11065.1, *supra* note 19, § 3.1.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at § 3.2.

³² *Id.*; see also PBNDS 2008, *supra* note 16, at ICE/DRO Det. Standard Appendix A.

³³ ICE Directive 11065.1, *supra* note 19, § 5.2.

³⁴ *Id.* at § 3.3.

³⁵ *Id.* at § 5.2.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at § 7.1

⁴⁴ The ERO Custody Management Division (CMD) is responsible for segregation placements related to disability, medical or mental illness, suicide risk, hunger strike, status as a victim of sexual assault, or other special vulnerability. *Id.* at § 5.3.

⁴⁵ The CMD and Office of Detention Policy and Planning (ODPP) co-chair a subcommittee of the Detention Monitoring Council to “ensure an effective, timely and comprehensive review of the segregation reports sent to Headquarters from the FODs.” *Id.* at § 7.5.

⁴⁶ *Id.* at § 7.2.1

⁴⁷ *Id.* at § 7.2.2

⁴⁸ *Id.* at § 7.2.3

⁴⁹ *Id.*

⁵⁰ PBNDS 2011, *supra* note 18, at Preface.

⁵¹ John Morton. “Testimony to the House Appropriations Subcommittee on Homeland Security.” March 8, 2012.

⁵² American Civil Liberties Union, Holiday on ICE: The U.S. Department of Homeland Security’s New Immigration Detention Standards (Mar. 28, 2012), *available at*

https://www.aclu.org/files/assets/aclu_detention_standards_hearing_statement_final_2.pdf.

⁵³ Editorial, *Immigration’s loose rules of detention*, L.A. Times, Mar. 18, 2012, *available at* <http://articles.latimes.com/2012/mar/18/opinion/la-ed-detention-immigration-reform-20120318>.

⁵⁴ *ICE Fact Sheet*, *supra* note 25.

⁵⁵ In response to FOIA requests, Washoe County submitted more than 500 pages of documents detailing various reports on detainees, facility policies and documents outlining internal segregation guidelines.

⁵⁶ Letter from Deputy Pickard, *Administrative Deputy at Washoe County Sheriff’s Office, in response to a Freedom of Information Request* (Mar. 23, 2012) (on file with The John Marshall Human Rights Clinic) [hereinafter Washoe County Sheriff’s Office].

⁵⁷ Nutraloaf is “prepared from foods...ground up in a raw state to achieve a meat loaf consistency. Binding ingredients such as eggs, beans, flour, and cornmeal are added...and (the loaf) is placed in refrigeration until ordered.” National Immigrant Justice Center & Physicians for Human Rights, *Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigrant Detention*, 10 (Sept. 2012), *available at* https://www.immigrantjustice.org/sites/immigrantjustice.org/files/Invisible%20in%20Isolation-The%20Use%20of%20Segregation%20and%20Solitary%20Confinement%20in%20Immigration%20Detention.September%202012_7.pdf.

⁵⁸ Washoe County Sheriff’s Office, *supra* note 55.

⁵⁹ Correctional Association of New York, *Lockdown New York: Disciplinary Confinement in New York State Prisons* (Oct. 2003), *available at* <http://www.prisonpolicy.org/scans/lockdown-new-york-1.pdf>, *citing*, American Correctional Association, *Standards for Adult Correctional Institutions*, Standard 4-4320, 4th Ed. (Lanham, MD: American Correctional Association, 2003); Matthew Purdy, *What’s Worse Than Solitary Confinement? Just Taste This*, N.Y. Times (Aug. 4, 2002) *available at*.

<http://www.nytimes.com/2002/08/04/nyregion/our-towns-what-s-worse-than-solitary-confinement-just-taste-this.html>

⁶⁰ PBNDS 2011, *supra* note 18, § 4.1

⁶¹ Washoe County Sheriff's Office, *supra* note 55.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ PBNDS 2011, *supra* note 18, at Preface.

⁶⁶ Seneca County responded to the FOIA request by submitting nearly 200 pages of documents, which included reports on detainees and documents detailing facility rules.

⁶⁷ Seneca County Jail, *supra* note 22.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Butler County provided more than 270 pages of documents in response to the FOIA request. The facility responded with a wide range of documentations, including in-facility disciplinary reports and other documentation relating to segregation.

⁷¹ Letter from Katie McMahon, *Captain at the Butler County Sheriff's Office, in response to a Freedom of Information Request* (Mar. 8, 2012) (on file with The John Marshall Human Rights Clinic) [hereinafter Butler County Sheriff's Office].

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ PBNDS 2011, *supra* note 18, at § 2.12

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Butler County Sheriff's Office, *supra* note 70.

⁷⁹ *Id.*

⁸⁰ PBNDS 2008, *supra* note 16, at ICE/DRO Det. Standard Attachment A.

⁸¹ *Id.*

⁸² This act charged in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of greatest severity (riot or an escape) otherwise the charge is classified as (1) giving money to, or receiving money from, any person for an illegal or prohibited purpose, such as introducing/conveying contraband or (2) giving money or another item of value to, or accepting money or another item of value from anyone, including another detainee, without staff authorization.

⁸³ May be categorized and charged as a greater or lesser offense, depending on the kind of disobedience: continuing to riot, continuing to fight, refusing to provide a urine sample

⁸⁴ May be categorized as greater or lesser offense, depending on the nature and purpose of the reproduction (i.e. counterfeiting release papers to effect escape)